IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.7319 OF 2005

Union of India & Ors. ...Petitioners.
Vs.
S. Syed Mohamed Jamaludeen. ...Respondents.

....

Mr. P.M. Pradhan for the Petitioners.
None for the Respondent.

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CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

March 23, 2006.

P.C. (Per Dr. D.Y. Chandrachud, J.) :

The Respondent belongs to the Indian P.& T. Accounts and Finance Services (Group B) of the Central Civil Services. Between 1991 and 1994, he worked as an Accounts Officer in the Surat Telecom District in the State of Gujarat. Between 21st February 1992 and 2nd August 1993, the Respondent was attached to the Telephone Revenue Section as an Accounts Officer; from which position, he came to be transferred to the Cash Section on 2nd August 1993. A chargesheet was issued to the Respondent containing two articles of charge: (i) That during 1991-92 and 1992-

93, the Respondent had failed to issue a disconnection order in respect of Telephone 626974 for the non-payment of bills resulting in a loss of Rs.21,09,658/- to the Department; and (ii) That during the same period he failed to issue a rent bill to the subscriber of Telephone 624952 and a disconnection order for the non-payment of bills, resulting in a loss of Rs.39,11,617 to the Department. A disciplinary enquiry was held and, after the report of the Enquiry Officer, the Disciplinary Authority passed an order on 19th October 2001 reducing the pay of the Respondent by one stage from Rs.10,750/- to Rs.10,475/- for a period of one year with a direction that the Respondent would not earn increments during the period of such reduction and that on the expiry of the period, the reduction will have the effect of postponing future increments of pay. The Respondent moved the Appellate Authority which modified the order of punishment by directing that the pay of the Respondent shall be reduced by one stage in the time scale of pay for a period of one year with a further direction that the Respondent would earn his increments of pay during the period of reduction and that on the expiry of the period, the reduction will not have effect on the future increments of pay.

2. Aggrieved by the order of the Appellate Authority, the Respondent moved the Central Administrative Tribunal. By its judgment and order dated 5th April 2005, the Tribunal came to the conclusion that the Respondent had been transferred from the TRA Section and posted to the Cash Section on 2nd August 1993 and that the events forming the basis of the chargesheet, including the issuance of the large bills, had all transpired after the transfer of the Respondent to a different Section. The Tribunal was of the view that the finding of misconduct was based on no evidence. The charge that was framed against the Respondent was not that he had failed to discharge his supervisory duties.

3. The order of the Tribunal has been impugned in these proceedings. Counsel appearing on behalf of the Petitioner submitted at the hearing of the present proceedings that the Enquiry Officer is the sole judge of facts and it was not open to the Tribunal in the course of the proceedings before it to reappreciate the evidence by substituting it its own findings for the findings that were arrived at in disciplinary proceedings. Before we deal with the merits of the matter, it may be noted that in para 9 of its judgment, the Tribunal has appreciated the correct legal

position by observing that the object of judicial review is to determine as to whether there was any breach of the rules or procedure in the decision making process. The Tribunal has noted that the truth or correctness of the charges and of the finding cannot be investigated into unless there is an absence of any evidence whatsoever in support of the charge. Hence, though the sufficiency of evidence would not be open to scrutiny, the Tribunal could interfere if the finding of misconduct was not based on any evidence at all. This statement of law is consistent with the well settled legal position and it cannot be said that the Tribunal has erred in its perception of the principles of law that govern the field. The question, however, is whether the Tribunal is correct in holding that the finding was not supported by any evidence on record so as to justify its interference in the proceedings.

4. Now, the report of the Enquiry Officer dated 28th July 2000 is rather instructive and it would be necessary to extract the main finding therein:

> "Since Shri S.S. M. Jamaludeen was not working as AOTR after 2-8-93, he CAN NOT BE HELD RESPONSIBLE for non disconnection of Telephone Nos.629674 & 624952 on 21-9-93 (correct date may be 10-10-93 as per rules) for non payment outstanding bills

> of Rs.8,91,574/- & Rs.16,23,841/- of dtd. 1-9-93, respectively and for remaining heavy calls bills of dtd. 1-11-93.
>
> In this regard, P.O. has concluded that CO, is responsible for heavy loss of Revenue of Rs.39,11,617/- is NOT CONVINCING me at all."

The Enquiry Officer, therefore, specifically came to the conclusion that the Respondent was not working as an Accounts Officer in the TRA Section after 2nd August 1993 and that he was, therefore, not responsible for the failure to disconnect the two telephones of the concerned subscribers for non-payment of the outstanding bills which were dated 1st September 1993. Therefore, even the Enquiry Officer entered a clear cut finding in that regard. Hence the two charges that had been framed against the Respondent are clearly to be answered in the negative. Having said this, the only observation of the Enquiry Officer was that if the Respondent had taken timely action for disconnection of due to the earlier bills and taken security deposits, the situation could have been avoided. The Department had taken the advice of the Union Public Service Commission and the advice that was rendered on 31st March 2003 which forms a part of the present record is as follows :

> "The Commission observed from the above facts that the

> loss of Rs.21,09,383/- to the Department is incurred on account of the bills issued on 1-9-1993 and on two subsequent dates. The loss of Rs.275/- is incurred on account of bill issued on 1-7-1993. The CO worked as AO (TR) in Surat Office from 21-2-1992 to 1-8-1993. Until the CO was in that office all the three bills altogether, of this telephone number had amounted to Rs.2482/- which were recovered on 15-7-1993. However, one bill dated 1-7-1993 of Rs.275/- remained unrecovered. Connecting the loss of Rs.21,09,383/- to events up to the end of July i.e. till the time the CO was holding the charge as AO (TA) is unfair." (emphasis supplied).

5. On this state of the record, the Tribunal was, in our view, only reiterating the main finding of the Enquiry Officer that the events which have taken place were after the transfer of the Respondent from the TR Section to the Cash Section and for which the Respondent could not be held responsible. The only surviving issue related to a bill of Rs.275/- dated 1st July 1993 and the Tribunal noted from the evidence of DW 1 that the bill could have been issued only after 15th July 1993, for which the Department did not lead any evidence to the contrary . There was no charge that there was a failure on the part of the Respondent to discharge his supervisory functions.

6. In view of the settled limitations that govern the exercise

of the power of judicial review in disciplinary matters, we have, with the assistance of the Counsel, perused the relevant part of the record with a view to determine whether the Tribunal has overstepped the limits of its jurisdiction. Having done so, we are satisfied that the finding of the Tribunal that there was no evidence in support of the charge of misconduct does not warrant any interference under Article 226 of the Constitution. As we have already noted earlier, even the Enquiry Officer has concluded that the events relating to the issuance of bills dated 1st September 1993 and the failure of disconnection for the non-payment those bills related to a period after the Respondent was transferred from the concerned Section and could not have been the foundation of any misconduct at all. Hence, we see no merit in the Petition. The petition shall accordingly stand dismissed. Counsel appearing on behalf of the Petitioner has, however, prayed that this Court may extend time for complying with the order of the Tribunal. Time to do so shall stand extended by a period of eight weeks from today.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.